

**CALIFORNIA INSTITUTE OF TECHNOLOGY
JET PROPULSION LABORATORY
GENERAL PROVISIONS - ARCHITECT-ENGINEER CONTRACT**

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GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL

The attached Exhibits are incorporated into the General Provisions. Submission of an offer and beginning performance constitute certification and recertification per Exhibit A.

Exhibit A. Certifications of Nonsegregated Facilities, Clean Air and Water, Anti-Kickback Compliance, Americans with Disabilities Act Compliance, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and Certification of Full Disclosure Regarding Debarred, Suspended, or Proposed for Debarment Status (Form JPL 2892)

Exhibit B. Release of Information (Form JPL 1737)

Exhibit C. Asbestos Notification (Form JPL 2895)

Exhibit D. Notification to Prospective Contractors of JPL's Ethics Policies and Anti-Kickback Hotline (Form JPL 2385)

ARTICLE GP-1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meanings set forth below:

- (a) The term "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration.
- (b) The term "contract amount" means the Contract price, the estimated cost and fee, if any, or the ceiling price of the Contract.
- (c) The term "Contracting Officer" means the Government Contracting Officer for the Prime Contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (d) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Contract, unless otherwise indicated.
- (e) The term "Government" means the Government of the United States of America, unless the context is otherwise.
- (f) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.
- (g) The term "Institute" means the California Institute of Technology as a party to this Contract.
- (h) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Contract. The rights of JPL under this Contract are the rights of the California Institute of Technology as a party to this Contract.
- (i) The term "NASA" means the National Aeronautics and Space Administration.
- (j) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Contract, unless otherwise indicated.
- (k) The term "person" means any individual, partnership, corporation, association, institution or other entity.
- (l) The term "Prime Contract" means the Contract between the Institute and NASA for the United States of America (herein called the Government),.
- (m) The term "subcontract," as used in this Contract, includes, but is not limited to, purchase orders under this Contract.
- (n) The terms "United States" or "U.S." mean the United States of America.

ARTICLE GP-2. ORDER OF PRECEDENCE

- (a) The rights and obligations of the parties of this Contract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise.
- (b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Article, (ii) the Alterations Article in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:
 - (1) The Alterations Article.
 - (2) The GPs not altered.
 - (3) The Schedule, other than the Alterations Article.

(c) To the extent of any inconsistency between

- (1) the Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise, in the Schedule, and
- (2) any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise in the Schedule,

(c)(1) has order of precedence over (c)(2).

ARTICLE GP-3. AUTHORITY OF JPL REPRESENTATIVES

No request, notice, authorization, direction or order received by the Contractor and issued either pursuant to a provision of this Contract, to a provision of any document incorporated in this Contract by reference, or otherwise, shall be binding upon either the Contractor or the Institute unless issued or ratified in writing by the Manager, Procurement Division, JPL, or by the Procurement Division Manager's authorized representative. Designations of authorized representatives shall be in writing, signed by the Manager, Procurement Division, and shall define the scope and limitations of the authorized representatives' authorities. A copy of each such designation, and of each modification or cancellation thereof, shall be furnished the Contractor. The Contractor shall immediately notify, in writing, the Manager of the Procurement Division or the Procurement Division Manager's authorized representative whenever a request, notice, authorization, direction or order has been received from a representative of JPL other than the Manager of the Procurement Division, or the Procurement Division Manager's authorized representative, which, but for the lack of authorization on the part of the issuing JPL representative, would: (i) effect a change within the meaning of the "Changes" Article; (ii) increase or decrease the Contract amount or amount allotted to this Contract; or (iii) otherwise be the basis for assertion of a claim by the Contractor under any provision of the Contract.

ARTICLE GP-4. ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES

- (a) The Contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
 - (1) Any assignment or reassignment authorized under this provision shall cover all amounts payable under this Contract, and not paid as of (i) the effective date of assignment or (ii) the date JPL receives written notice of the assignment, whichever is later.
 - (2) No assignment may be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Contract.
 - (3) Two copies of the notice of assignment, signed by the Contractor, shall be furnished to JPL, Attn: Accounts Payable.
 - (4) If a party other than the Contractor provides JPL with a notification that the amount due or to become due under this contract has been assigned and that payment is to be made to the claimed assignee, JPL may withhold any payments which are due and payable under the Contract until JPL is furnished with either (i) verification or denial of assignment from the Contractor or (ii) reasonable proof that the assignment has been made.
 - (5) The Contractor shall not furnish or disclose to any assignee under this Contract any classified document (which term includes this Contract if access to classified material is authorized under this Contract) or information pertaining to classified work under this Contract unless JPL authorizes such action in writing.
 - (6) No assignment may be made which includes, either specifically or by implication, any delegation of the Contractor's duty to perform the services or provide the supplies required by this Contract unless such assignment and delegation is consented to by JPL in accordance with the provisions of paragraph (c) below.

- (c) The Contractor agrees that it will delegate no part of the duties required of it by this Contract without the prior written consent of JPL; provided, however, that nothing contained herein shall be deemed to prohibit the Contractor from placing purchase orders and subcontracts, subject, however, to the provision of this Contract entitled "Subcontracts."

ARTICLE GP-5. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS

This is a rated order certified for national defense use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

ARTICLE GP-6. CONTRACTUALLY REQUIRED NOTICES

Unless otherwise specified in this Contract, any notice which the Contractor is required to provide to JPL under any provision of this Contract shall be directed to the Manager, Procurement Division, JPL, or the Procurement Division Manager's authorized representative.

ARTICLE GP-7. RELEASE OF INFORMATION

(This Article does not apply if the Article entitled "Release of Information - Preliminary Engineering Report (PER)" is applicable.)

The Contractor agrees that all information released by the Contractor for publicity or promotional purposes (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Contractor's work with and for JPL will be submitted to JPL for review for technical accuracy prior to issuance. (See enclosed form letter JPL 1737, "Release of Information.")

ARTICLE GP-8. BANKRUPTCY

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the JPL negotiator responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of JPL contract numbers for all JPL contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

ARTICLE GP-9. INSURANCE AND INDEMNIFICATION (A-E)

- (a) Insurance. The Contractor shall, at its own expense, provide and maintain during the entire performance period of this Contract at least the following kinds and minimum amounts of insurance with the Institute named as an additional named insured in policies for comprehensive general liability insurance with a carrier licensed and admitted in the State of California.
- (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Contractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Contractor is qualified pursuant to statutory authority to do so.
 - (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.

- (3) Professional Liability. The Contractor agrees that it will be responsible to the Government and the Institute for, and indemnify and hold harmless the Government and the Institute, its trustees, officers and employees from, any loss, cost, damage, expense or liability or any suit or claim therefor, by reason of breach of professional duty, arising out of or in connection with the performance of this Contract, occasioned in whole or in part by the error, omission or negligent act of the Contractor, its employees or agents. The Contractor will at all times carry such professional liability insurance as will protect it from the foregoing risks with an insurance carrier and in a form satisfactory to the Institute and in an amount of not less than \$1,000,000, unless a lesser amount is specified in the Schedule of this Contract.
- (b) Insurance Certificates and Endorsements. Before commencing work under this Contract, the Contractor shall furnish (i) certificates of insurance for the coverages specified in (a) above, and (ii) an additional insured endorsement naming the Institute as an additional insured to the contract for the coverage specified in (a)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this Contract is to be performed prescribe, or (ii) until 30 days after the insurer or the Contractor gives written notice to JPL, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Contract, and (ii) be primary and non-contributing to any insurance procured by the Institute. The Contractor agrees to permit the Institute to examine its original policies, should the Institute so request. Should the Contractor at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, the Institute shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Contractor.
- (c) Indemnification. The Contractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees, from any loss, cost, damage, expense or liability, attorney's fees, or any suit therefor, by reason of actual or alleged property damage or personal injury of whatsoever kind or character, arising out of or in connection with the performance of work hereunder by the Contractor or any of its subcontractors, howsoever the same may be caused, including any of the same resulting from alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only such loss, cost, damage, expense or liability attributable to the sole negligence or willful misconduct of the Government or of the Institute, its trustees, officers or employees.

ARTICLE GP-10. NOTICE TO JPL OF LABOR DISPUTES

- (a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice to JPL. The initial notice shall include the following:
- (1) Identification of parts/materials, etc., which are or may be affected;
 - (2) Brief description of work-around plans to avoid delivery or performance delays. If the actual or potential dispute involves a lower tier subcontractor, advise as to potential alternate sources;
 - (3) Other Government agencies having responsibility for any functions concerning the affected operation, e.g., quality control, agency resident representative, etc., and the title, name and telephone of the agency representative.
 - (4) Other Government agencies which have been notified of the situation, and if available, the title, name and telephone number of any representative of another agency who is involved with the actual or threatened labor dispute;
 - (5) Specific information regarding transportation of parts/materials or personnel which is or may be affected;
 - (6) Manufacturer/Subcontractor and union data to include:
 - (A) Name, address and telephone numbers of the manufacturer/subcontractor representative and Industrial Relations Representative to be contacted for further information;
 - (B) Union's name and local lodge number, if known.

If any of the required information is not available when providing the initial notice, indicate when it is estimated that such information can be provided.

- (b) The Contractor agrees to insert the substance of this Article, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that, in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher-tier subcontractor or JPL, as the case may be, concerning the dispute.

ARTICLE GP-11. ASBESTOS NOTIFICATION

(This Article applies if any of the Contract effort will be performed in JPL-Pasadena or JPL-Edwards buildings.)

Contractor acknowledges receipt of the attached "Asbestos Notification," form JPL 2895, identifying JPL buildings containing asbestos and agrees to distribute the Notice to all its personnel prior to their commencing work in such buildings. Contractor agrees to coordinate with the JPL Environmental Affairs and Chemical Controls Office for special asbestos handling instructions to be given to all Contractor's personnel, including subcontractors' personnel, prior to their commencing work, if any, which could disturb asbestos in JPL-controlled buildings. The substance of this Article will be included in all subcontracts issued under this Article for work performed in JPL-Pasadena or JPL-Edwards buildings.

ARTICLE GP-12. ARCHITECTURAL DESIGNS AND DATA - INSTITUTE AND GOVERNMENT RIGHTS

The Government and the Institute may duplicate, use and disclose in any manner and for any purpose, and have others so do, all data, such as, for example, drawings, designs, specifications, architectural designs of buildings and structures, notes and other architect-engineer work produced in the performance of this Contract, or in contemplation thereof, and all as-built drawings produced after completion of the work, and without additional cost to the Institute or the Government; and with respect thereto the Contractor agrees to and does hereby grant to the Institute and the Government a non-exclusive, irrevocable, royalty-free license throughout the world for governmental purposes to use, publish, translate, reproduce, deliver, perform, dispose of, and authorize others so to do, all such data which the Contractor may cover by copyright and all architectural designs as to which it may assert any rights or establish any claim under the design patent or copyright laws. The Contractor shall use due care not to deliver or include in data produced or used in the performance of this Contract any copyrighted data not licensed hereunder without the prior written approval of the Institute and the Contracting Officer, unless it provides the written permission of the copyright owner for the uses specified herein. The Contractor for a period of three years after completion of the project agrees to provide access to all such data on the request of the Institute or the Government.

ARTICLE GP-13. RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR

- (a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this Contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.
- (b) Neither JPL's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the Institute in accordance with applicable law for all damages to the Institute or the Government caused by the Contractor's negligent performance of any of the services furnished under this Contract.
- (c) The rights and remedies of the Institute provided for under this Contract are in addition to any other rights and remedies provided by law.
- (d) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

ARTICLE GP-14. DRUG-FREE WORKPLACE REQUIREMENTS

The Contractor agrees to inform all Contractor personnel, prior to their first entrance upon JPL premises, that JPL's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that Contractor personnel are required to comply with JPL's policy of maintaining a drug-free workplace.

ARTICLE GP-15. SAFETY: ILLNESS AND INJURY PREVENTION PROGRAM

All Contractors whose personnel work at a site in California must establish and implement an effective illness and injury prevention program in compliance with California law.

ARTICLE GP-16. ANTI-KICKBACK PROCEDURES

(a) Definitions.

- (1) "Kickback," as used in this Article, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
- (2) "Person," as used in this Article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- (3) "Prime contract," as used in this Article, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- (4) "Prime Contractor," as used in this Article, means a person who has entered into a prime contract with the United States.
- (5) "Prime Contractor employee," as used in this Article, means any officer, partner, employee, or agent of a prime contractor.
- (6) "Subcontract," as used in this Article, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
- (7) "Subcontractor," as used in this Article, (i) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (ii) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.
- (8) "Subcontractor employee," as used in this Article, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the Contract price charged by a prime Contractor to the United States or in the Contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.

(c) (1) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this Article may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

- (2) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this Article.
- (3) The Institute may (i) offset the amount of the kickback against any monies owed under the Contract and/or (ii) direct that the Contractor withhold, from sums owed a subcontractor under the contract, the amount of any kickback. JPL may order that e monies withheld under subdivision (c)(3))(ii) of this Article be paid over to JPL unless JPL has already offset those monies under subdivision (c)(3))(i) of this Article. In either case, the Contractor shall notify JPL when the monies are withheld.
- (4) The Contractor agrees to incorporate the substance of this Article, including this subparagraph (c)(4), in all subcontracts under this Contract.

ARTICLE GP-17. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(This Article applies if this Contract is expected to exceed \$100,000.)

(a) Definitions.

- (1) "Agency," as used in this Article, means executive agency as defined in 2.101.
- (2) "Covered Federal action," as used in this Article, means any of the following Federal actions:
 - (A) The awarding of any Federal contract.
 - (B) The making of any Federal grant.
 - (C) The making of any Federal loan.
 - (D) The entering into of any cooperative agreement.
 - (E) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (3) "Indian tribe" and "tribal organization," as used in this Article, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.
- (4) "Influencing or attempting to influence," as used in this Article, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
- (5) "Local government," as used in this Article, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of governmental duty, including a local public authority, special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.
- (6) "Officer or employee of an agency," as used in this Article, includes the following individuals who are employed by an agency:
 - (A) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
 - (B) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
 - (C) A special Government employee, as defined in section 202, title 18, United States Code.
 - (D) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

- (7) "Person," as used in this Article, means an individual corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- (8) "Reasonable compensation," as used in this Article, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
- (9) "Reasonable payment," as used in this Article, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
- (10) "Recipient," as used in this Article, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- (11) "Regularly employed," as used in this Article, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.
- (12) "State," as used in this Article, means, a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory of possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

- (1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; and the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:
 - (A) Agency and legislative liaison by own employees.
 - (i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this Article, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
 - (ii) For purposes of paragraph (b)(3)(A)(i) of this Article, providing any information specifically requested by an agency or Congress is permitted at any time.
 - (iii) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

- a. Discussing with an agency the qualities and characteristics (including individual demonstrations) of any person's products or services, conditions or terms of sale, and service capabilities.
 - b. Technical discussions and other activities regarding the application to adaptation of the person's products or services for an agency's use.
- (iv) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action -
- a. Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - b. Technical discussions regarding preparation of an unsolicited proposal prior to its official submission; and
 - c. Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
- (v) Only those services expressly authorized by paragraph (b)(3)(A)(i) are permitted under this Section (b)(3)(A).

(B) Professional and technical services.

- (i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this Article, does not apply in the case of :
 - a. A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
 - b. Any reasonable payment to a person other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (ii) For purposes of paragraph (b)(3)(B)(i) of this Article, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the

preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (iv) Only those services expressly authorized by paragraphs (b)(3)(B)(i)a. and b. of Section (b)(3)(B) are permitted under this Section.
- (v) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

- (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard for LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this Article, if paid for with appropriated funds.
- (2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this Article. An event that materially affects the accuracy of the information reported includes :
 - (A) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (B) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (C) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (3) The Contractor shall submit and require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
- (4) All contractor and subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the JPL negotiator for JPL, the prime Contractor. The Contractor shall submit all disclosures to the JPL negotiator (for provision to the Contracting Officer) at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this Article.

(e) Penalties.

- (1) Any person who makes an expenditure prohibited under paragraph (a) of this Article or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this Article shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost Allowability. Nothing in this Article makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this Article will not be made allowable under any other Article.

ARTICLE GP-18. CONTRACTOR AND SUBCONTRACTOR COST OR PRICING DATA

(This Article is applicable if either the basic Contract or any modification exceeds \$500,000.)

(a) Contractor Cost or Pricing Data. Whenever the price of the basic Contract, or the negotiated price of any change, or other modification to this Contract is expected to exceed \$500,000, the Contractor agrees to furnish the Institute certified cost or pricing data, using the JPL certificate, form JPL 2496, or approved equivalent unless the Institute determines that the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or that the prices are set by law or regulation.

(b) Subcontractor Cost or Pricing Data.

(1) Before awarding any subcontract expected to exceed \$500,000 when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$500,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is:

(A) Based on adequate price competition;

(B) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(C) Set by law or regulation.

(2) The requirement for obtaining certified cost or pricing data with respect to any subcontract change or other modification does not apply to any subcontract change or modification, at any tier, where this Contract is a firm fixed-price or fixed-price with escalation contract unless such change or other modification results from a Contract change or other modification to this Contract, nor does it apply to a subcontract change or other modification, at any tier, where this Contract is not firm fixed price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Contract.

(3) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.804-4, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under subparagraph (b)(1) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(4) In each subcontract that exceeds \$500,000 when entered into, the Contractor shall insert either:

(A) The substance of this Article, including this paragraph (4), if paragraph (b)(1) above requires submission of cost or pricing data for the subcontract; or

(B) The substance of the clause at FAR 52.215-25, "Subcontractor Cost or Pricing Data - Modifications," including any corresponding implementing or supplementing provisions in the NFS.

(c) Price Reduction for Defective Cost or Pricing Data.

(1) If any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract, was increased by any significant amount because (i) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (ii) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Contract shall be modified to reflect the reduction.

- (2) Any reduction in the Contract price under paragraph (1) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual subcontract or (ii) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (3) (A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
- (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of JPL.
 - (iii) The Contract was based on an agreement about the total cost of the Contract and there was no agreement about the cost of each item procured under the Contract.
 - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (B) (i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Contract price reduction if:
- a. The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - b. The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the Contract (or price of the modification) and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if:
- a. The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
 - b. The Government proves that the facts demonstrate that the Contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.
- (4) In the event of a disagreement between the Contracting Officer and the Contractor with respect to a question of fact involved in the Contracting Officer's determination to reduce the price of this Contract, the Contractor may, subject to the prior approval of the Institute, which approval will not be unreasonably withheld, process such disagreement as a dispute to the extent that it may be entitled to do so under the provisions of the Prime Contract.
- (d) Examination of Records. For purposes of verifying that certified cost or pricing data required to be submitted in conjunction with the negotiation of this Contract or change or modification thereto, or otherwise pursuant to the provisions of this Article, were accurate, complete, and current, the Contracting Officer of the Prime Contract, or authorized representatives, shall - until the expiration of three years from the date of final payment under this Contract or of the time periods specified in FAR subpart 4.7 and any corresponding implementing or supplementing provisions in the NFS, whichever expires earlier - have the right to examine those books, records, documents, papers and other supporting data which involve transactions related to this Contract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein. The rights herein are in addition to those contained in any other provision of this Contract dealing with records, audit and records, and examination of records.

- (e) If any reduction in the Contract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Contractor's defective pricing including simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

ARTICLE GP-19. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

(The provisions of this Article shall be applicable only if the amount of this Contract exceeds \$25,000.)

- (a) The Contractor shall report to the Contracting Officer and JPL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed under this Contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.
- (c) The Contractor agrees to include, and require inclusion of, this Article in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed \$25,000.

ARTICLE GP-20. AUDIT-NEGOTIATION

- (a) Examination of Costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable Contract, or any combination of these, the Contractor shall maintain - and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit - books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the Contract.
- (b) Cost or Pricing Data. If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this Contract or any modification to this Contract, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the Contract or Modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.
- (c) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (i) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (ii) the data reported.
- (d) Availability. The Contractor shall make available at its office at all reasonable times the materials described in paragraphs (a) and (b) above, for examination, audit, or reproduction, until three years after final payment under this Contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of FAR and any corresponding implementing or supplementing provisions in the NFS, or for any longer period required by statute or by other Article of this Contract. In addition:
 - (1) If this Contract is completely or partially terminated, the records relating to the work terminated shall be made available for three years after any resulting final termination settlement; and

- (2) Records relating to appeals under the Disputes clause of the prime contract or if this Contract contains a "Disputes" Article, to appeals under such Article, or to litigation or the settlement of claims arising under or relating to this Contract, shall be made available until such appeals, litigation, or claims are disposed of.
- (e) Except as otherwise provided in FAR Subpart 4.7, Contractor Records Retention, and any corresponding implementing or supplementing provisions in the NFS, the Contractor may transfer computer data in machine readable form from one reliable computer medium to another. The Contractor's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The Contractor's choice of form or type of materials described in paragraphs (a), (b), and (c) of this Article affects neither the Contractor's obligations nor the Government's rights under this Article.
- (f) The Contractor shall insert all of the provisions of this Article, including this paragraph (f), in all subcontracts under this Contract which are over the small purchase limitation in FAR Part 13, altering the Article only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.
- (g) If this Contract is a cost-reimbursement contract with an educational or other nonprofit institution, the provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this Contract.

ARTICLE GP-21. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

- (a) This Article does not apply if this Contract does not exceed the FAR Part 13 small purchase limitation and does not apply if this Contract is for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.
- (b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until three years after final payment under this Contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, and any corresponding implementing or supplementing provisions in the NFS, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this Contract.
- (c) The periods of access and examination in paragraph (b) above for records relating to (i) appeals under the "Disputes" Article of the Government prime contract, or if this Contract contains a "Disputes" Article, to appeals under such Article, (ii) litigation or settlement of claims arising from the performance of this Contract, or (iii) costs and expenses of this Contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

ARTICLE GP-22. PROHIBITION OF CONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN CONTRACT PERFORMANCE

The Contractor, its employees, agents and subcontractors, shall not use privately owned (noncommercial) aircraft in the performance of this Contract without prior approval of JPL. Any request for approval to use privately owned aircraft must include a certificate of insurance as evidence that the Contractor has in effect Aircraft Liability Insurance coverage of not less than \$5,000,000 for all deaths, injuries and property damage arising from one accident or occurrence. The Contractor shall include this provision in any subcontract involving travel subject to JPL approval.

ARTICLE GP-23. CHANGES

- (a) JPL may at any time, by written Unilateral Modification, and without notice to the sureties, if any, make changes within the general scope of this Contract in the services to be performed.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performing this Contract, whether or not changed by the Modification, JPL shall make an equitable adjustment in (i) the Contract price, the time of performance, or both; and (ii) other affected terms of the Contract, and shall modify the Contract accordingly.

- (c) The Contractor must assert its right to an adjustment under this Article within 30 days from the date of receipt of the Modification. However, if JPL decides that the facts justify it, JPL may receive and act upon a proposal submitted before final payment of the Contract.
- (d) JPL may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by JPL.
- (e) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, JPL shall have the right to prescribe the manner of the disposition of the property.
- (f) Nothing in this Article shall excuse the Contractor from proceeding with the Contract as modified.
- (g) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of JPL.

ARTICLE GP-24. PRINTING AND DUPLICATING

(This Article does not apply unless this Contract requires the Contractor to provide printing or significant reproduction, i.e., in excess of 5,000 copies of a single page or in excess of 25,000 copies in the aggregate of multiple pages.)

- (a) The Contractor shall reproduce any documentation required by this Contract in accordance with the provisions of the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States.
- (b) The term "printing," as used in this provision, is defined in the Government Printing and Binding Regulations and includes the processes of composition, plate making, presswork, binding, and the end items produced by such processes and equipment.
- (c) The Contractor is authorized to duplicate production units by offset plate making, copy-processing machines, or lithographs presses when negatives or metal plates are not required. The Contractor shall not exceed 5,000 production units of any one page or 25,000 units in the aggregated of multiple pages. Such plates may not exceed a maximum image size of 10-3/4 by 14-1/4 inches. A "production unit" is one sheet, size 8-1/2 x 11 inches (215 x 280 mm) one side only, and one color.
- (d) This Article does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this Contract; or administrative printing, for example, forms and instructional materials, necessary to be used by the Contractor
- (e) If the Contractor has reason to believe that any activity required under this Contract violates the regulations referred to in paragraph (a) of this Article, the Contractor shall provide the JPL Negotiator with immediate notice in writing and request approval prior to accomplishment of the activity.

Note 1: The terms "documentation" referred to in paragraph (a) and "production units" referred to in paragraph (c) of this Article, Printing and Duplicating, pertain solely to "Government publications." "Government publications" is defined as (i) reports intended primarily for internal use by the Government and (ii) reports or other materials of the type that the Government itself distributes to the public under an agency program. "Government publications" shall, unless subject to exemption under applicable regulations, be printed by or through the Government Printing Office even though the distribution of these reports and materials may be effectuated by the Contractor for the Government.

Examples of documents which are "Government publications" include, but are not limited to: (i) publications released by the Contractor or a subcontractor to the public for the purpose of promoting NASA or a Government agency sponsor; (ii) deliverable final reports but not interim drafts of such reports; (iii) deliverable review board presentations and conclusions in which a majority of the review board membership consists of Government representatives.

Examples of documents which are not "Government publications" include, but are not limited to: (i) publications for internal usage and communication by JPL or any contractor or a subcontractor such as JPL's or a contractor's Telephone Directory or JPL's or a contractor's internal newsletter, (ii) public information, education and public service documents, and award certificates printed for JPL or a contractor rather than Government usage, including those which may contain an incidental reference to sponsorship by NASA or another Government agency; (iii) publications for which the printing costs are not paid for by the Government; (iv) non-deliverable reports provided to the Government for informational purposes which are suitable for publication in academic, technical or professional journals and similar publications; and (v) review board presentations and conclusions in which a majority of the formal review board membership consists of JPL or contractor or subcontractor representatives, where Government attendance is only incidental, and the Contract does not expressly require Government approval of the proceedings.

Note 2: Requests for waivers to permit commercial printers to print "Government publications" in cases of exigencies or other appropriate circumstances shall be submitted by the Contractor to the JPL negotiator for submission to the NASA Printing Management Officer through the Contracting Officer.

ARTICLE GP-25. AUTHORIZATION AND CONSENT

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of the Prime Contract or any subcontract at any tier.
- (b) The Contractor agrees to include, and require inclusion of, this Article, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples and design or testing services expected to exceed \$25,000); however, omission of this Article from any subcontract, under or over \$25,000, does not affect this authorization and consent.

ARTICLE GP-26. CLEAN AIR AND WATER

(This Article does not apply to small purchases as defined in FAR Part 13 or to the use of facilities outside the United States.. The Article applies to the Contract if it exceeds \$100,000 [or \$100,000 in one year for an indefinite delivery contract], or the facility to be used has been the subject of a conviction under the Air Act or Water Act and is listed by the EPA as a violating facility, and the acquisition is not otherwise exempt under FAR 23.104.)

(a) Definitions.

- (1) "Air Act," as used in this Article, means the Clean Air Act (42 U.S.C. 7401 et seq.).
- (2) "Clean air standards," as used in this Article, means:
 - (A) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;
 - (B) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));
 - (C) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411 (c) or (d)); or
 - (D) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412 (d)).
- (3) "Clean water standards," as used in this Article, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).
- (4) "Compliance," as used in this Article, means compliance with:
 - (A) Clean air or water standards; or

(B) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

(5) "Facility," as used in this Article, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

(6) "Water Act," as used in this Article, means Clean Water Act (33 U.S.C. 1251 et seq.).

(b) The Contractor agrees:

(1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this Contract;

(2) That no portion of the work required by this Contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the Contract is being performed; and

(4) To include this Article into any nonexempt subcontract, including this paragraph (b)(4), if:

(A) The contract is expected to exceed \$100,000;

(B) The Contractor believes that orders under an indefinite quantity contract in any year will exceed \$100,000; or

(C) A facility to be used has been the subject of a conviction under the applicable portion of the Air Act (42 U.S.C. 7413(c)(1)) or the Water Act (33 U.S.C. 1319(c)) and is listed by EPA as a violating facility; and

(D) The acquisition is not otherwise exempt under FAR 23.104 and any corresponding implementing or supplementing provisions in the NFS.

ARTICLE GP-27. RELEASE OF INFORMATION - PRELIMINARY ENGINEERING REPORT (PER) CONTRACTS

(This Article applies only if this Contract requires the Contractor to prepare a Preliminary Engineering Report [PER]. and supersedes the Article entitled "Release of Information.")

The A-E agrees not to make, or cause to be made, or permit any of its subcontractors (including lower-tier subcontractors) to make, any public disclosure whatsoever relative to this Contract or any lower-tier subcontract (including any information generated thereunder), without first submitting three copies of the text of such planned disclosure to JPL to the attention of the Contract Negotiator and awaiting receipt of written approval from JPL concerning the manner, degree and extent of such public disclosure. The A-E further agrees to be bound by the decision of JPL in such matters.

ARTICLE GP-28. GOVERNMENT PROPERTY

(a) JPL shall deliver to the Contractor, at the time stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the delivery or performance schedule, the Government-owned property described as JPL-furnished property in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Contractor, JPL shall equitably adjust affected provisions of this Contract in accordance with the Changes Article when:

- (1) The Contractor submits a timely written request for an equitable adjustment; and
 - (2) The facts warrant an equitable adjustment.
- (b) Title to JPL-furnished property shall remain in the Government. The Contractor shall use the JPL-furnished property only in connection with this Contract. The Contractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for JPL or Government inspection at all reasonable times.
- (c) Upon delivery of JPL-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except:
- (1) For reasonable wear and tear;
 - (2) To the extent property is consumed in performing this Contract; or
 - (3) As otherwise provided for by the provisions of this Contract.
- (d) Upon completing this Contract, the Contractor shall follow the instructions of JPL regarding the disposition of all JPL-furnished property not consumed in performing this Contract or previously delivered to JPL. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid as directed by JPL.
- (e) If this Contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "JPL-furnished" (wherever they appear in this Article) shall be construed as "United States Government" and "United States Government-owned/JPL-furnished," respectively.

ARTICLE GP-29. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION

(This provision is not applicable to contracts exempt under regulations of the Secretary of Labor (29 CFR 5.15), including but not limited to contracts for supplies, materials, or articles ordinarily available in the open market, contracts, other than construction of \$2500 or less, construction contracts of \$2000 or less, contracts to be performed solely within a foreign country, and contracts for supplies in connection with which any required services are merely incidental to the contract and do not require substantial employment of laborers or mechanics,)

- (a) Overtime Requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics (see FAR 22.300 and any corresponding implementing or supplementing provisions in the NFS) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) Violation, Liability for Unpaid Wages, and Liquidated Damages. In the event of any violation of the provisions set forth in paragraph (a) of this Article, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this Article in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this Article.
- (c) Withholding for Unpaid Wages and Liquidated Damages. Either JPL or the Contracting Officer shall, upon their own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract, or any other contract with JPL, or any other Federally assisted contract which is subject to the Federal Contract Work Hours and Safety Act which is held by the Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this Article.

(d) Payrolls and Basic Records.

- (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of Contract work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
 - (2) The records to be maintained under paragraph (d)(1) of this Article shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Institute, the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.
- (e) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this Article and also an Article requiring the subcontractors to include these provisions in any lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this Article.

ARTICLE GP-30. TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENTS

(This Article applies if the contract is in support of Space Station Freedom Program activities which may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR parts 120 through 130 (Subchapter M) in accordance with the "Space Station Level I Directive - Subject: Space Station Technology Transfer Control - dated March 21, 1989.")

- (a) In the cooperative Space Station Freedom program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data which are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station contractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR) to transfer such data.
- (b) The Contractor agrees, when specifically directed in writing by the JPL Negotiator or an authorized JPL representative under this Contract, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by the JPL Negotiator or an authorized JPL representative under this Contract.
- (c) It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Contractor to transfer in accordance with paragraph (b), above, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.
- (d) Nothing contained in this Article affects the allocation of technical data rights between NASA and the Contractor or any subcontractors as set forth in the "Rights in Data" Article of this Contract, nor the protection of any proprietary technical data which may be available to the Contractor or any subcontractor under that Article.
- (e) The Contractor agrees to include this Article, including this paragraph (e), in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

ARTICLE GP-31. EQUAL OPPORTUNITY

(The following Article is applicable unless this Contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor issued under Executive Order 11246, as amended; for example, contracts are exempt for work performed outside the United States by employees recruited outside the United States.)

If, during any 12-month period (including the 12 months preceding the award of this Contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (a) through (k) below during performing this Contract. Upon request, the Contractor shall provide information necessary to determine the applicability of this Article.

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this Article.
- (d) The Contractor shall, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this Article and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish to NASA all information required by Executive Order 11246, as amended, and by the rules, regulations and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.
- (h) The Contractor shall permit access to its books, records, and accounts by NASA or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.
- (i) If the OFCCP determines that the Contractor is not in compliance with this Article or any rule, regulation, or order of the Secretary of Labor, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (j) The Contractor shall include the terms and conditions of paragraphs (a) through (k) of this Article in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

- (k) The Contractor shall take such action with respect to any subcontract or purchase order as NASA may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

ARTICLE GP-32. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

(This Article is applicable if the amount of this Contract is in excess of, or is expected to exceed, \$2,500, unless the work is performed outside the United States by employees recruited outside the United States.)

(a) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as (i) employment, (ii) upgrading, (iii) demotion or transfer, (iv) recruitment, (v) advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings.

- (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

- (c) Noncompliance. If the Contractor does not comply with the requirements of this Article, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

- (d) Subcontracts. The Contractor shall include the terms of this Article in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

ARTICLE GP-33. AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS

(This Article is applicable if this Contract is for, or is expected to amount to, \$10,000 or more, unless the work is performed outside the United States by employees recruited outside the United States.)

(a) Definitions.

- (1) "Appropriate office of the State employment service system," as used in this Article, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

- (2) "Openings that the Contractor proposes to fill from within its own organization," as used in this Article, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.
- (3) "Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this Article, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.
- (4) "Suitable employment openings," as used in this Article:
 - (A) Includes, but is not limited to, openings that occur in jobs categorized as (i) production and nonproduction, (ii) plant and office, (iii) laborers and mechanics, (iv) supervisory and nonsupervisory, (v) technical, and (vi) executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and
 - (B) Includes full-time employment, temporary employment of over three days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as (i) employment, (ii) upgrading, (iii) demotion or transfer, (iv) recruitment, (v) advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing Openings.

- (1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this Contract. An independent corporate affiliate is exempt from this requirement.
- (2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.
- (3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
- (4) Whenever the Contractor becomes contractually bound to the listing terms of this Article, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this Contract Article.

- (5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.

(d) Applicability.

- (1) This Article does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.
- (2) The terms of paragraph (c) above of this Article do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Postings.

- (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

- (f) Noncompliance. If the Contractor does not comply with the requirements of this Article, appropriate actions may be taken under the rules, regulations and relevant orders of the Secretary issued pursuant to the Act.

- (g) Subcontracts. The Contractor shall include the terms of this Article in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

ARTICLE GP-34. EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

(This Article is applicable if this Contract is for, or is expected to amount to, \$10,000 or more, unless the work is performed outside the United States by employees recruited outside the United States.)

- (a) The Contractor shall report at least annually, as required by the Secretary of Labor, on:

- (1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the Contractor by job category and hiring location; and
- (2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

- (b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

- (c) Reports shall be submitted no later than March 31 of each year.

- (d) The employment activity report required by paragraph (a)(2) of this Article shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this Article. Contractors may select an ending date (i) as of the end of any pay period during the period January through March 1st of the year the report is due, or (ii) as of December 31, if the Contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (e) The count of veterans reported according to paragraph (a) of this Article shall be based on voluntary disclosure. Each contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.
- (f) Subcontracts. The Contractor shall include the terms of this Article in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

ARTICLE GP-35. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

- (a) Contractor agrees to comply with the Americans with Disabilities Act (42 U.S.C. 12101 et. seq.) and all implementing regulations.
- (b) Contractor agrees that it will be responsible to the Institute and will indemnify and hold harmless the Institute, its trustees, officers, and employees from any loss, cost, damage, expense or liability or suit therefor, by reason of actual or alleged property damage or personal injury of whatever kind or character, arising out of, or in connection with performance of the requirements of paragraph (a) above by the Contractor or any of its subcontractors, however the same may be caused, excepting only such loss, cost, damage, expense or liability attributable to the sole or contributory active negligence of the Institute, its trustees, officers, or employees.
- (c) Contractor agrees to insert this Article, including (c), in all subcontracts and purchase orders hereunder.

ARTICLE GP-36. PREFERENCE FOR U.S.-FLAG AIR CARRIERS

- (a) Definitions.
 - (1) "International air transportation," as used in this Article, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
 - (2) "United States," as used in this Article, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.
 - (3) "U.S.-flag air carrier," as used in this Article, means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).
- (b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign- flag air carrier if a U.S.-flag air carrier is available to provide such services.
- (c) The Contractor agrees, in performing work under this Contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

- (d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a certification on vouchers involving such transportation essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.- flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [state reasons]:

(end of certification)

- (e) The Contractor shall include the substance of this Article, including this paragraph (e), in each subcontract or purchase order under this Contract that may involve international air transportation.

ARTICLE GP-37. SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the Contract will be limited to individuals or firms as are specifically set forth in the Schedule of this Contract. The Contractor shall obtain JPL's written consent before making any substitution for these subcontractors, associates, or consultants.

ARTICLE GP-38. FEDERAL, STATE, AND LOCAL TAXES

(a) Definitions.

- (1) "Contract date," as used in this Article, means the effective date of this Contract or Modification.
 - (2) "All applicable Federal, State, and local taxes and duties," as used in this Article, means all taxes and duties, in effect on the Contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this Contract.
 - (3) "After-imposed Federal tax," as used in this Article, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the Contract date but whose exemption was later revoked or reduced during the Contract period, on the transactions or property covered by this Contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the Contract date. It does not include social security tax or other employment taxes.
 - (4) "After-relieved Federal tax," as used in this Article, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this Contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the Contract date.
- (b) Unless otherwise provided in the Schedule, the Contract price includes all applicable Federal, State, and local taxes and duties.
- (c) The Contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Contract price, as a contingency reserve or otherwise.
- (d) The Contract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The Contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of JPL.
- (f) No adjustment shall be made in the Contract price under this Article unless the amount of the adjustment exceeds \$250.

- (g) The Contractor shall promptly notify JPL of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the Contract price and shall take appropriate action as JPL directs.
- (h) Items of tangible personal property to be delivered under this Contract are for resale to the United States Government (California Resale Certificate No. SR AP 17-006226).
- (i) JPL shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

ARTICLE GP-39. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

- (a) "Parastatal organization," as used in this Article, means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa. It does not include a corporation, partnership, or entity which previously received start up assistance from the South African Industrial Development Corporation but which is now privately owned and which is not owned, controlled, or subsidized by the Government of South Africa.
- (b) Unless advance written approval of JPL and the Contracting Officer is obtained, the Contractor shall not acquire for use in the performance of this Contract:
 - (1) Any supplies or services originating from sources within the communist areas of North Korea, Vietnam, Cambodia, or Cuba;
 - (2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba;
 - (3) Arms, ammunition, or military vehicles produced in South Africa, or manufacturing data for such articles; or
 - (4) Supplies or services from the South African Government or parastatal organizations of South Africa.
- (c) The Contractor shall not acquire for use in the performance of this Contract supplies or services originating from sources within Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq.
- (d) The Contractor agrees to insert the provisions of this Article, including this paragraph (d), in all subcontracts hereunder.

ARTICLE GP-40. REQUIREMENTS FOR REGISTRATION OF DESIGNERS

The design of architectural, structural, mechanical, electrical, civil or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in the State of California.

ARTICLE GP-41. REPORT ON SUBCONTRACTS

(This Article is applicable if the amount of this Contract exceeds \$100,000.)

- (a) The Contractor shall submit information on NASA Form 667 to the National Aeronautics and Space Administration (Code HM), Washington, DC 20546, substantially as follows with respect to each subcontract or subcontract modification exceeding \$25,000 within 10 working days after its execution:
 - (1) The name and address of the prime contractor and the NASA prime contract number.
 - (2) The name and address of the subcontractor.
 - (3) Whether the subcontractor is a large or small business concern and/or a minority business concern.
 - (4) Whether the type of effort being performed involves research and development.

- (5) A brief description of the subcontract work.
 - (6) The amount of the subcontract.
 - (7) The principal location where the subcontract work is to be performed, if known.
- (b) The Contractor and its subcontractors shall submit negative reports annually, if applicable, on each prime contract and first-tier subcontract subject to this reporting requirement. These negative reports shall be submitted not later than October 31 for the 12-month period ending September 30th of each year. The negative reporting shall be continued until the contract or subcontract has been physically completed and the National Aeronautics and Space Administration (Code HM), Washington, DC 20546, so notified by the Contractor or subcontractor.
 - (c) "Subcontract," as used in this Article, means procurement in excess of \$25,000 by the Contractor or first-tier subcontractor of articles, materials, or services for performing this Contract (including facility leases), except purchases, regardless of amount, of stock items, materials, or services that cannot be specifically identified with this Contract.
 - (d) "Research and development," as used in this Article, means basic and applied research, and design and development of prototypes and processes, to (i) pursue a planned search for new knowledge, with or without reference to a specific application, (ii) apply existing knowledge in the creation of new products or processes, or (iii) apply existing knowledge in the improvement or modification of present products and processes. It excludes subcontracts for the purchase of standard commercial items and services.
 - (e) The Contractor shall:
 - (1) Insert the provisions of paragraphs (a), (b), (c), and (d) of this Article in each subcontract over \$100,000;
 - (2) Instruct its subcontractors to submit their reports directly to the National Aeronautics and Space Administration (Code HM), Washington, DC 20546; and
 - (3) Provide its subcontractors with the number of the NASA prime contract.

ARTICLE GP-42. STOP WORK ORDER

- (a) JPL may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this Article. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, JPL shall either:
 - (1) Cancel the stop work order; or
 - (2) Terminate the work covered by such order either for convenience of the Institute or the Government or, if appropriate, for default.
- (b) If a stop work order issued under this Article is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. JPL shall make an equitable adjustment in the delivery schedule, the contract amount, and in any other provisions of the Contract that may be affected, and the Contract shall be modified, in writing, accordingly, if:
 - (1) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
 - (2) The Contractor asserts a claim for the adjustment within 30 days after the end of the period of work stoppage; provided, that, if JPL decides the facts justify the action, it may receive and act upon the claim asserted at any time before final payment under this Contract.

- (c) If a stop work order is not canceled and the work covered by the order is terminated for the convenience of the Institute or the Government, JPL shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.
- (d) If a stop work order is not canceled and the work covered by the order is terminated for default, JPL shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

ARTICLE GP-43. METHOD OF PAYMENT

- (a) Estimates shall be made monthly of the amount and value of the work and services performed by the Contractor under this Contract which meet the standards of quality established under this Contract. The estimates shall be prepared by the Contractor and accompanied by any supporting data required by JPL.
- (b) Upon approval of the estimate by JPL, payment upon properly executed vouchers shall be made to the Contractor, as soon as practicable, of 90% of the amount, less all previous payments. Also, whenever JPL determines that the amount retained is in excess of the amount adequate for the protection of the Institute, JPL may release the excess amount to the Contractor.
- (c) Upon satisfactory completion by the Contractor and acceptance by JPL of the work done by the Contractor under this Contract, the Contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work.
- (d) Before final payment under the Contract, or before settlement upon termination of the Contract, and as a condition precedent thereto, the Contractor shall execute and deliver to JPL a release of claims against the Institute arising under or by virtue of this Contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.

ARTICLE GP-44. TERMINATION

- (a) JPL may terminate this Contract in whole or, from time to time, in part, for the convenience of the Government or the Institute or because of the failure of the Contractor to fulfill the Contract obligations. JPL shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall:
 - (1) Immediately discontinue all services affected (unless the notice directs otherwise); and
 - (2) Deliver to JPL all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process.
- (b) If the termination is for the convenience of the Institute, an equitable adjustment in the Contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- (c) If the termination is for failure of the Contractor to fulfill the Contract obligations, JPL may complete the work by contract or otherwise and the Contractor shall be liable to the Institute for any additional cost for completion of the work.
- (d) If, after termination for failure to fulfill Contract obligations, it is determined that the Contractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Institute.
- (e) The rights and remedies of the Institute provided in this Article are in addition to any other rights and remedies provided by law or under this Contract.

**CERTIFICATIONS OF NONSEGREGATED FACILITIES, CLEAN AIR
AND WATER, ANTI-KICKBACK COMPLIANCE, AMERICANS WITH
DISABILITIES ACT COMPLIANCE, CERTIFICATION AND
DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN
FEDERAL TRANSACTIONS, AND CERTIFICATION OF FULL
DISCLOSURE REGARDING DEBARRED, SUSPENDED,
OR PROPOSED FOR DEBARMENT STATUS**

(NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)

CERTIFICATION OF NONSEGREGATED FACILITIES

- (a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.
- (b) By the submission of an offer in response to a solicitation incorporating this form JPL 2892, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.
- (c) By submission of the offer, the offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
 - (1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
 - (2) Retain such certifications in its files; and
 - (3) Forward this certification and the following notice to the proposed subcontractors:

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
CERTIFICATION OF NONSEGREGATED FACILITIES**

A Certificate of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontractor for all subcontracts during a period (i.e., quarterly, semi-annually, or annually).

(d) By commencing performance of the Contract work, the selected contractor certifies to the Nonsegregated Facilities provisions above.

CERTIFICATION OF CLEAN AIR AND WATER

By the submission of an offer in response to a solicitation incorporating this form JPL 2892, the offeror certifies as follows:

- (a) No facility to be utilized in the performance of this proposed contract is listed on the Environmental Protection Agency "List of Violating Facilities;"
- (b) The offeror will promptly notify JPL, prior to award, of the receipt of any communication from the Administrator, or a designee, of the U.S. Environmental Protection Agency, indicating that any facility which the offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- (c) The offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.
- (d) By commencing performance of the Contract work, the selected contractor certifies to the Clean Air and Water provisions above.

CERTIFICATION OF ANTI-KICKBACK COMPLIANCE

A Certification of Anti-Kickback Compliance must be submitted prior to award.

CERTIFICATION OF ANTI-KICKBACK COMPLIANCE

By submission of an offer in response to a solicitation incorporating this form JPL 2892, the offeror certifies that it has read the General Provision entitled "Anti-Kickback Procedures," contained in the solicitation and that neither it nor any of its employees has performed or participated in any prohibited actions, as defined in that provision, relating to the award of the Contract. By commencing performance of the Contract work, the selected contractor certifies to Anti-Kickback Compliance.

CERTIFICATION OF AMERICANS WITH DISABILITIES ACT COMPLIANCE

The Contractor represents and certifies the following as part of its offer:

CERTIFICATION OF AMERICANS WITH DISABILITIES ACT COMPLIANCE

By submission of an offer in response to a solicitation incorporating this form JPL 2892, the offeror certifies that it complies with the Americans with Disabilities Act, 42 U.S.C., 12101 et. seq., and will maintain compliance throughout the life of this Contract. By commencing performance of the Contract work, the selected contractor certifies to the Americans with Disabilities Act compliance.

**CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE
CERTAIN FEDERAL TRANSACTIONS**

(The following certification applies to all offers and awards in excess of \$100,000.)

- (a) The definitions and prohibitions contained in the General Provision Article "Limitation on Payments to Influence Certain Federal Transactions," are hereby incorporated by reference in paragraph (b) of this Certification.
- (b) The Offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989:
 - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
 - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities," to the JPL Contract Negotiator; and
 - (3) He or she will include the language of this Certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this Contract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to civil penalty of not less than \$20,000 and not more than \$100,000, for each such failure.

**CERTIFICATION OF FULL DISCLOSURE BY THE CONTRACTOR/OFFEROR
REGARDING WHETHER IT ANTICIPATES BEING OR IS DEBARRED, SUSPENDED,
OR PROPOSED FOR DEBARMENT BY THE
U.S. FEDERAL GOVERNMENT AT TIME OF AWARD.**

(This certification applies to contracts with a contract value exceeding the small purchase limitation in FAR Part 13.)

- (a) By submission of an offer in response to a solicitation incorporating this form JPL 2892, the offeror certifies that it has provided full disclosure in writing to JPL whether as of the anticipated time of award of any contract resulting from the solicitation, it anticipates that it or its principals will be debarred, suspended, or proposed for debarment by the U.S. Federal Government.
- (b) By commencing performance of the Contract work, the selected contractor certifies that it has made full disclosure to JPL in writing as to whether as of the time of award it or any of its principals is debarred, suspended, or proposed for debarment by the U. S. Federal Government. (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs).

RELEASE OF INFORMATION

This Contract with the Jet Propulsion Laboratory (JPL) constitutes a subcontract under a prime contract between the California Institute of Technology and the National Aeronautics and Space Administration (NASA). It is NASA's policy to provide the widest practical dissemination of information on all of its activities. Since 90% of NASA's research and development effort is performed by private industry, contractors and subcontractors have played a large role in this process.

In accordance with this policy, the Contractor may want to issue press releases or plan publicity and advertising from time to time, and the Contractor will be expected to respond to queries from information media.

Close coordination in all of these matters is required, and JPL requires that all materials (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Contractor's work with and for JPL be reviewed by JPL for technical accuracy prior to issuance or use.

To expedite this review, the Contractor shall send the materials to the JPL Public Information Office, mail stop 180-200, stating the Contractor's deadlines and referencing this Contract number.

In the event this Contract is a cost-reimbursement type contract, review by JPL shall not constitute approval for reimbursement of expenditures made in connection with publicity or advertising releases. Any such expenditures remain subject to applicable cost principles.

Nothing contained herein shall be deemed to change existing requirements relating to the release of classified information.

ASBESTOS NOTIFICATION

The Jet Propulsion Laboratory is committed to providing a safe and healthy work environment for all personnel.

In the past several years, the Laboratory management, working through the JPL Environmental Affairs and Chemical Controls Office (EACCO) and Facilities Division, has had an on-going program of asbestos identification and control. This program has included air monitoring and training for members of the Facilities and Maintenance staff.

Most of the asbestos located at JPL/Pasadena and JPL/Edwards is in restricted access areas such as mechanical rooms, boiler rooms, and attics. It is in good condition and does not pose any hazard during normal operations.

Some of the buildings at JPL/Pasadena have extensive sprayed fireproofing above the ceilings. These buildings at the Oak Grove Site include: 167, 168, 169, 179, 180, 183, 186, 230, 238, 264, 291 and Foothill Buildings 502, 506 and 507.

The EACCO staff has taken numerous air samples in these buildings. Visual inspections and air samples indicate that airborne asbestos levels in the buildings are much lower than those in industrial workplaces where serious adverse health effects have been observed. Levels in the buildings are not significantly different from levels outside.

Asbestos-containing materials pose no threat to your health unless the fibers become airborne. Any contractor maintenance/construction/renovation activity involving intentional or accidental contact with friable materials can release fibers. Therefore, it is important not to disturb the asbestos materials.

General written procedures and handling restrictions necessary to prevent disturbance have been provided to JPL and contractor personnel. Only authorized and properly trained personnel are permitted to perform any work which may disturb asbestos materials. All contractor operations performed in areas where asbestos is present must be reviewed by EACCO prior to initiation of activities, and then tested and released by EACCO after completion of contractor activities but prior to occupancy.

Pursuant to the California Health and Safety Code (Chapter 10.4, Section 25915), each employee has the right to review all reports about surveys, bulk sampling and air sampling. These reports are available for review during normal business hours at Building

125, Room 211. To make an appointment to review these documents, contact the Chemical Controls Group at ext. 4-1771.

If you have questions regarding operational procedures for contractor activities, contact EACCO at ext. 4-1771.

NOTIFICATION TO PROSPECTIVE CONTRACTORS OF JPL'S ETHICS POLICIES AND ANTI-KICKBACK HOT LINE

JPL is committed to conducting its business in accordance with the highest standards of ethics and integrity. In this regard, we have an on-going orientation and training program to assure that every JPL employee is aware of this commitment and their individual responsibility for compliance. We must rely on the personal integrity of our employees and the integrity and cooperation of our suppliers and contractors to make sure that these high standards are maintained.

The policies that implement our standards of business conduct state clearly that no employee may solicit or accept any "kickback," gift, gratuity, entertainment, compensation, or favors of any kind from any supplier/contractor or prospective supplier/contractor to JPL. Our policies make it clear that these standards not only apply to procurement personnel but also to employees in all functions and at all levels.

The purpose of this letter is to make sure that you and your employees are aware of our policies, and that together we can achieve and maintain excellence in the conduct of our business relationships.

In the unlikely event that any JPL employee ever attempts to solicit a "kickback," please notify us immediately. JPL has established an Anti-Kickback Hot Line number, **(818) 354-9999**. Please feel free to call this number collect. The information you provide will be handled with confidentiality, investigated thoroughly, and appropriate action taken.

Thank you for your cooperation and support in this important matter.